REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

Claims 1-16 are pending. Claims 4, 15 and 16 stand withdrawn. Claims 2, 4 and 5 are canceled herein. Claim 1 is amended herein to recite a cationic peptide comprising SEQ ID NO: 2. The specification is amended herein to address formalities, such as the recitation of hyperlink code and to provide further description of figures. . Basis for these amendments may be found throughout the specification and claims as-filed, especially claims 4-5 and Figures 9-10. No new matter is presented by way of the present Amendment.

Applicants reserve the right to file at least one or more divisional or continuation application directed to any subject matter canceled by way of the present Amendment.

Drawings

The specification is amended herein to recite further description of Figures 9 and 10, corresponding to the numbering of the drawings. Figure 11 is submitted herein, numbered as Figure 11A.

Specification

The abstract of the disclosure is objected to for the recitation of the phrase "said peptide" in line 3. The abstract is amended herein to remove this phrase. The specification is objected to for purportedly reciting two Examples No. 11. The

specification is amended herein to renumber the examples as needed. The specification is further amended herein to remove the hyperlink code. Specifically, the website addresses recited in the specification have been amended to remove "http:/". Pursuant to M.P.E.P. § 608.01(a), a hyperlink is browser code reciting http:/, which will activate as a link. By removing "http:/", the recitation of the website addresses is not longer improper, and will not activate as a hyperlink. Thus, these objections are obviated.

Rejections under 35 U.S.C. § 102

Claims 1-3, 6-8, and 10-13 stand rejected under 35 U.S.C. § 102(b) as purportedly anticipated by Ohmori *et al.* (Biochem. Biophys. Res. Comm., 245: 259-265 (1998)). Applicants respectfully traverse.

"[A]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention as arranged in the claims." *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 225 U.S.P.Q. 253, 256 (Fed. Cir. 1985). The cited reference fails to describe or even suggest all of the elements of the rejected claims.

Ohmori *et al.* purportedly disclose five cationic peptides consisting of leucines (L) and lysines (K) residues, with compositions of 13L+5K (13-5), 11L+7K (11-7), 9L+9K (9-9), 7L+11K (7-11) and 5L+13K (5-13). These peptides purportedly have positive charges, of +5, +7, +9, +11, and +13, and do not contain acidic residues. However, the claims as amended herein, recite a cationic peptide comprising SEQ ID NO:2. Ohmori et al. fail to recite the specific peptides of SEQ ID NO:2. Thus, in light of the amendments herein, this rejection is moot.

Rejections under 35 U.S.C. § 103

Claims 9 and 14 stand rejected under 35 U.S.C. § 102(b) as anticipated by Ohmori *et al.* in view of Smith *et al.* (WO 96/40958). Applicants traverse.

As set forth in M.P.E.P § 2142, in order to establish a prima facie case of obviousness, three criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations.

As noted above, the present claims have been amended herein to recite the amino acid sequence of SEQ ID NO:2. Ohmori *et al.* do not teach or suggest the amino acid sequence SEQ ID NO: 2. Smith et al. fail to remedy the deficiencies of the primary reference, as Smith *et al.* do not teach these peptides. The cited references also fail to provide any motivation for the skilled artisan to attempt to modify the peptides of Ohmori *et al.* to obtain the claimed peptides.

Claims 1, 5, 6, 8, 9, and 14 stand rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Smith *et al.* in view of Wyman *et al.* (*Biochemistry*, 36: 3008-3017 (1997)). The Office Action states that it would have been obvious to the skilled artisan to have made the substitution of glutamates for lysines according to Wyman *et al.* in the peptide of Smith *et al.* Applicants traverse.

The present claims have been amended herein to recite the amino acid sequence of SEQ ID NO:2. Smith *et al.* do not teach or even suggest the amino acid sequence SEQ ID NO: 2. Wyman et al. fail to remedy the deficiencies of the primary reference, because Wyman fails disclose the peptides of SEQ ID NO:2. In addition,

the cited references, alone or in combination, do not provide any motivation for the skilled artisan to attempt to modify the peptides of Smith *et al.* to obtain the claimed peptides.

In light of the amendments made herein, and the above remarks, Applicants respectfully request that the rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: February 9, 2004

By: _____
Deborah H. Yellin
Registration No. 45,904

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

ABSTRACT

A peptide and a related complex for transferring an anionic substance of interest into a cell are disclosed. The peptide is a cationic peptide capable of binding to an anionic substance, capable to cause membrane disruption and which does not comprise acidic amino acid, preferably glutamic amino acid.